No. 88-318

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1988

RICHARD T.,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether use of a checkpoint without prior judicial authorization or particularized suspicion to detect intoxicated drivers, create public awareness of the dangers inherent in mixing drinking and driving, and to deter persons from driving under the influence is an unreasonable search or seizure within the meaning of the Fourth Amendment.

2. Whether prior judicial or legislative authorization is needed before law enforcement officials may set up a checkpoint for detecting intoxicated drivers, for creating public awareness concerning drinking and driving, and to deter persons from driving while under the influence of alcohol.

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OPINION BELOW

The California Court of Appeal, Fourth Appellate District, Division Three, reversed the conviction in a published opinion filed on September 19, 1986 (Pet., App. A.) The Court of Appeal issued a second opinion that was unpublished, affirming the

conviction on March 10, 1988. (Petition Appendix A.)

JURISDICTION

This Court has jurisdiction to consider this case pursuant to 28 U.S.C. 1257, subdivision 3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The applicable statutory and constitutional provisions involved are set forth in Appendix B of the petition.

STATEMENT OF THE CASE

A petition filed in the Orange County juvenile court charged petitioner in count one with driving while under the combined influence of an alcoholic beverage and drug (Veh. Code § 23152a), and in count two with driving a vehicle while having .10 or more of alcohol in his blood (Veh. Code § 23152b). (CT 1.)

Petitioner's motion to suppress evidence was heard and denied.

(RT 148-149.) The case was submitted on the police reports and the court sustained the allegation in count one of the petition. Petitioner was ordered to pay a fine. (CT 34.) He appealed. (CT 32.)

The Court of Appeal, Fourth Appellate District, Division Three, reversed the conviction in a published opinion filed on September 19, 1986. (Pet., App. A.)

The California Supreme Court granted respondent's petition for review and remanded the case in light of Ingersoll v. Palmer (1983) 43 Cal.3d 1321.

The Court of Appeal upheld the conviction in light of the Ingersoll decision in an unpublished opinion issued on March 10, 1988. (Pet., App. A.)

The California Supreme Court denied petitioner's request for review on June 29, 1988. (Pet., p. 3.)

STATEMENT OF FACTS

A hearing was held in the juvenile court concerning the procedures used in setting up and maintaining a sobriety checkpoint as petitioner was arrested after being stopped at a sobriety checkpoint on Knott Avenue in Anaheim, California. (RT 63-70.)

According to Anaheim Police Sergeant Lovejoy, checkpoints were set up after police spoke with the city attorney, read an opinion by the California Attorney General on the issue, and several legal articles. Police also observed a checkpoint that had been set up in Riverside, California. (RT 5.) Thereafter, written procedures were set up for the use of sobriety checkpoints. (RT 5.) Sergeant Lovejoy then briefed other officers who were to be involved with the checkpoints. (RT 10.)

The purpose of the checkpoint was to increase public awareness and education regarding drinking and driving. (RT 10.) Lovejoy supervised the setting up of the checkpoint on Knott Avenue on New Year's Eve, supervised the officers operating the checkpoint, and decided at what interval cars would be stopped based on traffic. He also made sure there was no deviation from written guidelines. (RT 13-14.)

Under present guidelines, they were to stop every other car prior to 11:00 p.m. and every car after 11:00 p.m. (RT 14-15, 32.) Officers were also told that the stop was not to take more than 15 to 25 seconds. (RT 15.) During the period officers contacted motorists, they were looking for signs of intoxication. If they found evidence of intoxication they were to ask for the license of the driver and pull the driver over to the

side. If there was no evidence of intoxication, they were to wave the driver on. (RT 16.) They also passed out an informational booklet to the drivers. (RT 17.) The average stop took about 20.3 seconds. (RT 17.)

Officers at the checkpoint had no discretion as to who could be stopped. (RT 18.) The checkpoint locations were picked based upon the number of driving under the influence arrests over a six week period before commencement of the program and the number of fatal accidents involving drivers who drove under the influence of alcohol during the two years before the checkpoint program. (RT 19.) The location of the checkpoint on Knott Avenue was based on a decision by Lovejoy and two other officers after evaluation of these factors. (RT 20.)

Generally, the Knott Avenue checkpoint and other checkpoints ran from 9:00 p.m. until between 2:30 or 3:30 a.m. The checkpoints were to be used on Friday and Saturday nights as well as Christmas and New Years Eve. (RT 20-21.)

There were press releases about two weeks before the first checkpoint was set up. There was newspaper coverage in the Los Angeles Times and other newspapers, radio coverage, and coverage by all three major television networks and two independent stations.

Publicity did not describe the location of the checkpoints, but just told of the checkpoints, times, and dates when the checkpoints would be held. (RT 24, 50.)

Motorists had advance warning of the checkpoints. There were two large, diamond shaped, 36 inch by 36 inch orange signs with black lettering indicating the

checkpoint was ahead. The signs were mounted on stands with three red flags across the top and flares. This warning was 2/10 of a mile from the checkpoint. (RT 25.)

Next, there were signs indicating reduced speeds were required and telling motorists to prepare to stop. There were signs warning motorists that no turns were permitted when the cones started before the checkpoint. The checkpoint had stop signs. (RT 25-27.)

Drivers were allowed to turn off before the cone pattern began in front of the checkpoint. (RT 27.) Between 5% and 10% of the drivers chose to turn off before the checkpoint. (RT 28.)

Also, if occupants of the cars approaching the checkpoint refused to roll their window down, officers were instructed to let the drivers proceed. (RT 33.) During the 1984 period when the

checkpoint was in operation, there was a .34% decrease in accidents caused by those driving under the influence. Driving under the influence arrests were also up over the previous year. (RT 35-36.)

SUMMARY OF ARGUMENT

The petition for writ of certiorari should be denied as use by law enforcement of a sobriety checkpoint without prior judicial authorization or particularized suspicion to detain drivers is reasonable under the Fourth Amendment.

Prior decisions of this Court have applied a balancing of interests test. In this test the interests of the state are balanced against the interests of the individual to determine whether a warrantless search or seizure without particular suspicion is reasonable.

Delaware v. Prouse (1979) 440 U.S. 648, 653-654. Given the serious safety and social problems presented by drunk drivers and the minimal intrusion to privacy caused by momentary detentions at a sobriety checkpoint set up with limits placed on law enforcement discretion, use of these checkpoints is reasonable.

Neither the temporary or permanent nature of the checkpoint nor the existence of judicial or legislative approval affects the overall reasonableness of these checkpoints under the Fourth Amendment.

As petitioner's detention and the seizure of any evidence occurred at a checkpoint in California that passed constitutional muster and was upheld by the California Supreme Court (Ingersoll v. Palmer (1987) 43 Cal.3d 1321), petitioner is not entitled to any relief from this Court.

ARGUMENT

SOBRIETY CHECKPOINTS ARE CONSTITUTIONAL

Petitioner asks this Court to grant certiorari because he contends stopping vehicles at sobriety checkpoints constitutes an unreasonable search and seizure under the Fourth Amendment. The sobriety checkpoint in this case was upheld by the California Court of Appeal in light of the decision of the California Supreme Court in Ingersoll v. Palmer, (1987) 43 Cal.3d 1321 which upheld the constitutionality of such checkpoints. Petitioner, thus, is asking this Court to indirectly review the decision of the California Supreme Court in Ingersoll. However, Ingersoll was properly decided. Thus, there are no grounds justifying a grant of certiorari in the instant case.

A. Lack Of Particular Suspicion.

Petitioner first argues the use of a sobriety checkpoint by the Anaheim Police Department to stop vehicles without any warrant and without any specific cause to check on the sobriety of drivers within that city is violative of the Fourth Amendment. No so. The checkpoint set up by the Anaheim Police Department was consistent with the mandate of the Fourth Amendment.

The Fourth Amendment is implicated because stopping an automobile and detaining its occupants constitutes a seizure within the meaning of the Fourth Amendment even though the purpose of the stop is limited and the resulting detention is brief. Delaware v. Prouse (1979) 440 U.S. 648, 653.

The essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of reasonableness

upon the exercise of discretion by law enforcement and other governmental officials. (Delaware v. Prouse, supra, 440 U.S. 648, 653-654.)

Accordingly, the permissibility of a particular law enforcement practice must be judged by balancing the intrusion on the individual's Fourth Amendment rights against the legitimate interests of the government. (Id., at p. 654.)

In this balancing equation it must also be noted that indivualized suspicion is not a prerequisite to a constitutional seizure of an automobile which is carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers.

(See United States v. Martinez-Fuerte (1976) 428 U.S. 543, 558-562; Delaware v. Prouse, supra, 440 U.S. 648, 654-655; Brown v. Texas (1979) 443 U.S. 47, 50.)

The importance of the governmental interest in sobriety checkpoints is now well established. Both this Court and the California Supreme Court have remarked on the death and destruction wreaked upon innocent victims by intoxicated drivers. (South Dakota v. Neville (1983) 459 U.S. 553, 558-562; Burg v. Municipal Court (1983) 35 Cal.3d 257, 262.)

The sobriety checkpoint serves three purposes in the fight against drunk driving. First, it assists in the apprehension of drunk drivers. Moreover, it serves two other purposes which are perhaps more important as they have a greater impact on the public. The checkpoint and the related publicity

deter persons who drink from driving and also enhance public awareness of the dangers inherent in mixing driving and drinking. (See Curbing the Drunk Driver Under the Fourth Amendment: The Constitutionality of Roadblock Seizures, 71 Georgetown L.J. 1457, 1458, fn. 3.)

Thus, there is a substantial state interest in regulating, by use of the sobriety checkpoint, individuals who drive while under the influence. This interest is furthered by the fact this Court has determined there is a lesser expectation of privacy in an automobile than in a residence or business establishment. (South Dakota v. Opperman (1976) 428 U.S. 364, 367-368.)

Moreover, this Court has upheld searches conducted where officials did not have specific information regarding criminal activity. In many cases, for example, this Court has recognized that

searches conducted as part of a general regulatory scheme in furtherance of an administrative purpose rather than as a part of a criminal investigation to secure evidence of crime, may be permissible under the Fourth Amendment though not supported by a showing of probable cause directed to a particular place or person. (See United States v. Biswell (1972) 406 U.S. 311; Wyman v. James (1971) 400 U.S. 309; Colonnade Catering Corp. v. United States (1970) 397 U.S. 72; Ingersoll v. Palmer, supra, 43 Cal.3d 1321, 1330; and cases cited therein.)

Based on these decisions, the California Supreme Court upheld the use of sobriety checkpoints in California finding this Court would uphold stops and inspections and sobriety checkpoints undertaken pursuant to predetermined

neutral criteria. (Ingersoll v. Palmer, supra, 43 Cal.3d 1321, 1335.)

In addition, this Court has upheld government inspection without notice, warrant, or individualized suspicion of wrongdoing in certain heavily regulated industries. (Donovan v. Dewey (1981) 452 U.S. 594 (mines); United States v. Biswell, supra, 406 U.S. 311 (firearms); Colonnade Catering Corp. v. United States, supra, 397 U.S. 72 (liquor).)

This Court has also upheld inspections and stops in the absence of individualized suspicion of wrongdoing in border patrol checkpoint inspections. (United States v. Martinez-Fuerte, supra, 428 U.S. 543.) This Court concluded that, with respect to immigration checkpoints, neither a warrant nor individualized suspicion was required. The court upheld the constitutionality of an immigration stop without

particularized suspicion at a checkpoint away from the border by balancing the governmental interests served against the intrusion on the Fourth Amendment interests. If a checkpoint designed to protect economic interests by limiting the entry of aliens into the country is valid, then certainly a checkpoint to limit drunk drivers, who could kill or maim innocent victims, is valid.

This Court has also indicated in Delaware v. Prouse, supra, 440 U.S. 648, that a neutrally operated checkpoint would be permissible.

> "This holding does not preclude the State of Delaware or other states from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion. Questioning of all oncoming traffic at a roadblock-type stop is one possible alternative." (Id., at p. 663.)

Thus, there is no reason to conclude the Fourth Amendment requires there be some sort of suspicion in all cases to justify an intrusion by the government into an individuals' right to privacy. (See State v. Superior Court (Ariz. 1984) 691 P.2d 1073, 1076.)

In addition, in light of the specific procedures devised and used in this case, it is evident there was no intrusion on petitioner's rights to any degree which outweighed the interests of the state in limiting the slaughter on the highways by drunk drivers.

Various factors have been articulated for determining whether a sobriety checkpoint meets the balancing test so that the interests of the state outweigh the intrusion on the privacy of the individual and the intrusion can be deemed reasonable within the context of the Fourth Amendment. Among the factors

to be considered are: (1) the degree of discretion, if any, left to the officer in the field; (2) the location designated for the roadblock; (3) the time and duration of the roadblock; (4) whether standards are set by superior officers; (5) the amount of advance warning to the public at large; (6) the amount of advance warning to the individual approaching motorist; (7) maintenance of safety conditions; (8) the degree of fear or anxiety generated by the manner of operation; (9) the duration of the detention; (10) method of operation; (11) availability of alternative methods; (12) the effectiveness of the procedure; and (13) any other relevant circumstances.

Not all the factors need be favorable to the state but all which are applicable should be considered. Some, of course, such as unbridled discretion

of the officer in the field, would run afoul of the Fourth Amendment regardless of other favorable factors. (State v. Deskins (Kan. 1983) 673 P.2d 1174, 1185.)

Turning first to the amount of discretion given to the officers, it is clear the officers manning the checkpoint in this case had little, if any, discretion. Basic guidelines had been set down by senior officials in the police force. However, the officers actually manning the checkpoint had no discretion. (RT 13-17.) Under the guidelines they were permitted to stop every other care before 11:00 p.m. and every car thereafter. (RT 14, 32.) The number of cars stopped was in accord with the preset guidelines. (RT 14, 32.)

The lack of discretion given to the officers at the checkpoints minimized the chance for arbitrary and capricious

conduct and certainly weighs in favor of the validity of the checkpoints here. (Ingersoll v. Palmer, supra, 43 Cal.3d 1321, 1342; States v. Deskins, supra, 673 P.2d 1174, 1185; see also People v. Hyde (1974) 12 Cal.3d 158, 169 (because all passengers are required to undergo a screening as a condition to boarding the airplane, there is no danger as there was in Camara that the decision to search a particular individual will be subject to the discretion of the official in the field; cf. State ex rel. Ekstrom v. Justice Court (Ariz. 1983) 663 P.2d 992, 996 [checkpoint invalid where no guidelines for officers and they were given too much discretion].)

The next factor to consider is the location of the checkpoint. Here the checkpoint was selected after studies of accidents and drunk driving arrests. (RT 19-20.)

Thus, the checkpoint was established in an area where the objective of dealing with drunk drivers could be effectively met. (Ingersol v. Palmer, supra, 43 Cal.3d 1321, 1343; People v. Hyde, supra, 12 Cal.3d 158, 167.)

In addition, it must be noted the checkpoint was not chosen by an officer in the field, but was chosen by senior officials of the police department based on public policy needs and not some whim or caprice. (RT 20.)

It must also be noted the checkpoint was not an ongoing operation, but was set up in late December, at night, when the greatest incidence of drunk driving and accidents were likely to occur. Thus, the time and duration of the checkpoint also weighs in favor of its use here. This is particularly true as a major consideration was the Christmas holiday

season when drunk drivers generally take their largest toll. (RT 20-21.)

In addition, as noted earlier, the standard for the operation of the checkpoint was not left to officers at the scene, but were based upon police policy set by senior officers. This factor also weighs in favor of the checkpoint's use here. (Ingersoll v. Palmer, supra, 43 Cal.3d 1321, 1341-1342; State v. Deskins, supra, 673 P.2d 1174, 1185.)

Also, it must be noted there was advance warning to the public as information concerning the checkpoint was made available to the media by the police department. Indeed, articles appeared in newspapers about the checkpoint and radio and television spots apparently were also done by the police to inform the public about the checkpoint. (RT 24, 50.) Advance publicity certainly enhances the

deterrent effect of the checkpoint, reduces surprise, fear and anxiety, and lends legitimacy to the checkpoint. This factor also weighs in favor of the use of the checkpoint here.

Another important factor is that the public had advance warning of the checkpoint while driving as there were warning signs and lights as the drivers approached the checkpoint. (RT 25-27; Ingersoll v. Palmer, supra, 43 Cal.3d 1321, 1346.)

Advance warnings have been a significant factor considered by courts in upholding fixed checkpoints. (Ingersoll v. Palmer, supra, 43 Cal.3d 1321, 1346; United States v. Martines-Fuerte, supra, 12 Cal.3d 543; see too the concurring opinion in People v. Hyde, supra, 12 Cal.3d 158, 175-176.)

Indeed, because of the advance notice many motorists were able to turn

off the street and avoid the checkpoint or change positions with another passenger to avoid arrest or detention. (RT 27.)

There was also no problem with safety of the motorist as the site was well lit and maintained and police considered traffic problems in maintaining the checkpoint. (RT 25-27.)

Fear and anxiety of the motorists were not a problem. Testimony indicated motorists could and did avoid the checkpoint by turning off the street before the checkpoint. However, 90% of the people stopped apparently favored the concept of a sobriety checkpoint as they proceeded through it. (RT 27.) It has also been noted that fair warning of the checkpoint, as occurred here, reduces this anxiety. (Jones v. State (Fla. App.2 Dist. 1984) 459 So.2d 1068, 1080;

affirmed in State v. Jones (Fla. 1986) 483 So.2d 433, 439.)

Duration of the detention was also not a problem as the detentions were kept between 15 to 25 seconds. (RT 15-17.) The short duration of the detention and limited nature of the intrusion is another factor which weighs in favor of the use of the checkpoint in this case. (United States v. Martinez-Fuerte, supra, 428 U.S. 543, 547; Ingersoll v. Palmer, supra, 43 Cal.3d 1321, 1346.)

The facts also show the checkpoint was operated in a safe, well-organized manner, traffic safety was considered, and, as a whole, the intrusion was kept to a minimum so as to not interfere with motorist's Fourth Amendment rights while reaching the goals of the checkpoint.

Testimony also considered the checkpoint process to be effective.

(RT 31-36.) Moreover, there is nothing to indicate there was any less intrusive manner of stopping motorists to deal with the drunk driving problem In any event, this is not crucial as the conduct of the police was reasonable. (United States v. Sharpe (1985) 470 U.S. 675, 685.)

All these factors clearly point to the reasonable nature of the sobriety checkpoint here. It was designed to deal with the major problems caused by drunk drivers, but the intrusion was kept at a minimum consistent with the demands of the Fourth Amendment.

Thus, the sobriety checkpoint, in this case, would pass constitutional muster. (See Delaware v. Prouse, supra, 440 U.S. 648, 663-664 [inspection checkpoints at which some vehicles may be subject to further detention for safety and regulatory inspection are permissible]; United States v. Martines-

Fuerte, supra, 428 U.S. 543 [fixed checkpoint for immigration checks without specific suspicion valid]; United States v. Hernandez (9th Cir. 1984) 739 F.2d 484 [fixed temporary checkpoint upheld].)

State courts that have upheld sobriety checkpoints similar to the one at issue here include Arizona (State v. Superior Court, supra, 691 P.2d 1073); Florida (State v. Jones, (Fla. 1986) 483 So.2d 433); Georgia (State v. Golden (Ga.App. 1984) 318 S.E.2d 693); Illinois (People v. Bartley (Ill. 1985) 486 N.E.2d 880); Indiana (State v. Garcia (Ind. 1986) 500 N.E.2d 158); Iowa (State v. Riley (Iowa App. 1985) 377 N.W.2d 242); Kentucky (Kinslow v. Com. (Ky.App. 1983) 660 S.W.2d 677); Kansas (State v. Deskins (Kan. 1983) 673 P.2d 1174); Maine (State v. Cloukey (Me. 1985) 486 A.2d 143);

Maryland (Little v. State (Md. 1984) 479 A.2d 903); Massachusetts (Com. v. Trumble (Mass. 1985) 483 N.E.2d 1102);Missouri (State v. Welch (Mo. App. 1988) 755 S.W.2d 624); New Jersey (State v. Coccomo (1980) 427 A.2d 131); New York (People v. Scott (Ct. App. 1984) 483 N.Y.S. 2d 649); Ohio (State v. Alexander (Ohio Mun. 1985) 489 N.E.2d 1093); Vermont (State v. Martin (Vt. 1985) 496 A.2d 442); Virginia (Lowe v. Com. (Va. 1985) 337 S.E.2d 273); New Mexico (City of Las Cruces v. Betancourt (N.M.App. 1987) 735 P.2d 1161).

As there is a strong public policy in favor of deterring and limiting drunk driving on the highways, there is a strong basis for upholding the sobriety checkpoint. (Veh. Code, § 2814; People v. De la Torre (1967) 257 Cal.App.2d 162 [vehicle inspection checkpoint constitutional].) This is particularly

true as agricultural checkpoints have been upheld. (People v. Dickinson (1980) 104 Cal.App.3d 505.) There is just as great an interest in limiting drunk drivers as there has been found in limiting agricultural pests. By contrast, the intrusion on the privacy of the individual stopped at a checkpoint such as the one involved in this case is minimal.

Thus, on balance, the need for the checkpoint outweighs the minimal privacy interests impinged here. Consequently, the checkpoint as used in California is an example of reasonable police conduct within the meaning of the Fourth Amendment. (Delaware v. Prouse, supra, 440 U.S. 648, 654.)

B. **Temporary Nature Of The Checkpoint.**

Petitioner also makes much of the fact the trial court relied on the decision of the Supreme Court in United

States v. Martinez-Fuerte, supra, 482 U.S. 543 in evaluating the checkpoint here. He claims this was error as that case involved a permanent checkpoint while the checkpoint here was temporary but fixed. (Pet., p. 23.)

This argument misses the point. The key factor of the Martines-Fuerte, supra, 482 U.S. 543 decision and decisions such as Delaware v. Prouse, supra, 440 U.S. 648, was that courts should undertake a balancing of the rights of the individual and the state in determining whether any given checkpoint which allows the stopping of vehicles without cause is valid. The issue in the case was not the permanency or lack of permanency of the checkpoint. (Little v. State, supra, 479 A.2d 903, 914.)

Thus, there was nothing improper about the court relying on Martinez-Fuerte to balance the interest of the

state and the individual in determining the validity of the checkpoint at issue here. (State v. Deskins, supra, 673 P.2d 1174.)

Indeed, in an article on roadblocks in 37 A.L.R.4th 10, Search and Seizure--Routine Roadblocks, it is noted that where the validity of a particular roadblock has been challenged, the courts have generally relied upon the constitutional analysis set forth in this Court's cases ruling on the validity of fixed checkpoints and random roving stops. In such cases the courts balance the interest of the state in regulation against the interest of the individual. One of the footnotes to this discussion refers directly to the Martinez-Fuerte case, (fn. 7). Thus, the trial court properly relied on the Martinez-Fuerte decision. Decisions from other courts support respondent's position here and

have upheld fixed, but temporary checkpoints.

(People v. Scott, supra, 483 N.Y.S.2d 649, 653; People v. Bartley, supra, 486 N.E.2d 880, 884-887; U.S. v. Hernandez, supra, 735 F.2d 484; U.S. v. Venegas-Sapien (5th Cir. 1985) 762 F.2d 417.) Moreover, Delaware v. Prouse, supra, 440 P.2d 1174, at page 663, suggests spot checks under certain circumstances would be valid. The term "spot check" suggests something less than a permanent checkpoint with buildings, would pass constitutional muster.

Consequently, the temporary nature of sobriety checkpoint does not affect the constitutional validity of the checkpoint as used in California.

C. Statutory Or Legislative Authorization.

Petitioner finally makes much of the fact the checkpoint was not authorized by

state statute or legislation. (Pet., p. 25.) This is not an issue of constitutional dimensions but one of state law. The only issue properly before this Court is whether use of the checkpoint is reasonable under the Fourth Amendment. Furthermore, respondent is unaware of any rule of law that measures the validity of a checkpoint by statutory or legislative authorization.

As noted, the question is one of reasonableness under the Fourth Amendment. In any event, the California Supreme Court has concluded there is statutory authority for law enforcement to establish sobriety checkpoints under California law. The authority is implicit in law enforcement's statutory authority to enforce criminal laws generally or traffic laws specifically.

(Veh. Code, § 2400; Gov. Code, § 26600; Gov. Code, § 26601; Ingersoll v. Palmer, supra, 43 Cal.3d 1321, 1348-1349.).

CONCLUSION

As it is evident detention of drivers at a sobriety checkpoint is a reasonable search and seizure within the meaning of the Fourth Amendment, the detention of petitioner and subsequent seizure of any evidence was lawful. Accordingly, petitioner's request this Court grant certiorari should be denied.

Respectfully submitted,

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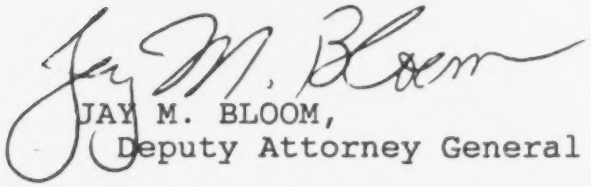
Supervising Deputy
Attorney General



JAY M. BLOOM,
Deputy Attorney General

JMB:bjr
11/2/88

APPEARANCE FORM

SUPREME COURT OF THE UNITED STATES

No. 88-318

Richard T. (Petitioner or Appellant) vs. California (Respondent or Appellee)

The Clerk will enter my appearance as Counsel of Record for People of the State of California

(Please list names of all parties represented)

who IN THIS COURT is ☐ Petitioner(s) ☒ Respondent(s) ☐ Amicus Curiae ☐ Appellant(s) ☐ Appellee(s)

I certify that I am a member of the Bar of the Supreme Court of the United States:

Signature Jay M. Bloom

(Type or print) Name Jay M. Bloom

☒ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm State of California Dept. of Justice, Office of Attorney General

Address 110 W.-A Street, Suite 700

City & State San Diego, California Zip 92101

Phone (619) 237-7750

ONLY COUNSEL OF RECORD SHALL ENTER AN APPEARANCE. THAT ATTORNEY WILL BE THE ONLY ONE NOTIFIED OF THE COURT'S ACTION IN THIS CASE. OTHER ATTORNEYS WHO DESIRE NOTIFICATION SHOULD MAKE APPROPRIATE ARRANGEMENTS WITH COUNSEL OF RECORD.

ONLY ATTORNEYS WHO ARE MEMBERS OF THE BAR OF THE SUPREME COURT OF THE UNITED STATES MAY FILE AN APPEARANCE FORM.

IT IS IMPORTANT THAT ALL REQUESTED INFORMATION BE PROVIDED.

CO-73A

AFFIDAVIT OF SERVICE BY MAIL

Attorney:

JOHN K. VAN DE KAMP
Attorney General of
the State of California
JAY M. BLOOM
Deputy Attorney General

110 West A Street, Suite 700
San Diego, California 92101

No: 88-318
October Term, 1988

PEOPLE OF THE STATE OF CALIFORNIA
Petitioner,

v.

RICHARD T.
Respondent.

I, THE UNDERSIGNED, say: I am a citizen of the United States, am 18 years of age or over, employed in the County of San Diego in which County the below stated mailing occurred, and not a party to the subject cause, my business address being 110 West A Street, Suite 700, San Diego, California 92101.

I have served the within RESPONSE TO PETITION FOR WRIT OF CERTIORARI as follows: To Joseph F. Spaniol, Clerk, Supreme Court of the United States, Washington, D.C. 20543, an original and 40 copies, of which a true and correct copy of the document filed in this cause is hereunto affixed; AND, by placing one copy in a separate envelope addressed for and to each addressee named as follows:

Ronald E. Klar, Deputy Public Defender
Counsel of Record
901 Civic Center Dr. West, Suite 200
Santa Ana, CA 92703

Each envelope was then sealed and with the postage prepaid deposited in the United States mail by me at San Diego, California, on the 3 day of November, 1988.

There is a delivery service by United States Mail at each place so addressed or regular communication by United States Mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California, November 3, 1988.

Barbara J. Renfrow
BARBARA J. RENFROW

Subscribed and sworn to before me this 3rd day of November, 1988.

JEAN M. BURNS
NOTARY PUBLIC - CALIFORNIA
COUNTY OF SAN DIEGO
My commission expires Sept. 17, 1991

Jean M. Burns
Notary Public in and for said County and State